

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FATHER CHRIS COLLINS, et al., )  
)  
Plaintiffs, )  
)  
VS. ) No. 4:15-CV-1704 (RWS)  
)  
THE DOE RUN RESOURCES CORPORATION, )  
et al., )  
)  
Defendants. )  
)

**MOTION HEARING  
BEFORE THE HONORABLE RODNEY W. SIPPEL  
FEBRUARY 24, 2016  
ST. LOUIS, MISSOURI**

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the Renco Group, Inc.; Ira L. Rennert)

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1 (PROCEEDINGS BEGAN AT 2:00 PM.)

2 THE COURT: Good afternoon.

3 MR. SHKOLNIK: Good afternoon.

4 MR. DOWD: Good afternoon, Judge.

5 MR. CROWE: Good afternoon.

6 MR. RODRIGUEZ: Good afternoon.

7 THE COURT: So we're here this afternoon in the case  
8 styled *J.Y.C.C., et al.*, for lack of a better word, against  
9 *Doe Run Resources Corporation, et al.*; Cause No. 4:15-CV-1704.

10 Would counsel make their appearances, please?

11 MR. SHKOLNIK: Hunter Shkolnik from Napoli Shkolnik  
12 on behalf of Plaintiffs. Good afternoon, Your Honor.

13 MR. MATHEWS: Todd Mathews from Gori Julian on behalf  
14 of the Plaintiffs. Good afternoon.

15 MR. RODRIGUEZ: Frank Rodriguez of the Law Firm of  
16 Rodriguez, Tramont & Nunez on behalf of the Plaintiffs,  
17 Your Honor.

18 MR. DOWD: Edward Dowd, Your Honor, for the Renco  
19 Group, Inc.; Ira Rennert; DR Acquisition Corporation and Renco  
20 Holdings.

21 MR. ROTHSCILD: Andy Rothschild, Your Honor, from  
22 Lewis Rice for the Doe Run Resources Corporation and the  
23 individual Defendants other than Mr. Rennert.

24 MR. CROWE: Jim Crowe for the same Defendants as  
25 Mr. Dowd, Your Honor.

1 MR. HICKEY: Michael Hickey from Lewis Rice; same  
2 Defendants as Mr. Rothschild.

3 THE COURT: Very well. So usually Rule 16  
4 conferences have a certain ease to them and low focus, but  
5 we'll bring focus, if not ease, to where we're going.

6 So who's going to take the lead for each side? Or do  
7 you -- You want to go first, Mr. Shkolnik?

8 MR. SHKOLNIK: Yes. Good afternoon, Your Honor.

9 THE COURT: All right. So, you know, hope springs  
10 eternal. Are there any announcements before we begin?

11 MR. SHKOLNIK: No. I wish there was.

12 THE COURT: Okay. All right.

13 MR. SHKOLNIK: It stopped snowing. I can say that at  
14 least.

15 THE COURT: It was a nonevent really at the end of  
16 the day.

17 MR. SHKOLNIK: Your Honor, I think just by way of  
18 background, this is, obviously, just one of a number of cases.  
19 We have 92 plaintiffs here. The case was removed from state  
20 court as I'm sure Your Honor knows. There is currently two  
21 other -- there's two Complaints before Judge Ross that has 150  
22 plaintiffs that were removed to the Federal Court. There is a  
23 fourth Complaint before Judge White that has 73 plaintiffs in  
24 it. Each of these cases, including the 92 before you, all  
25 deal with the same series of events; a -- a tragedy down in

1 Peru, a town called La Oroya, where a smelter poisoned the  
2 surrounding environment, resulting in lead poisoning to  
3 upwards of 10,000 children.

4 Judge Perry for the last -- I know I'll be corrected  
5 but I think six plus years has ---

6 THE COURT: Well, it's a 2011 case, right? So ---

7 MR. SHKOLNIK: Four years; I'm sorry. Four or five  
8 years; five.

9 THE COURT: Five, six; who's counting.

10 MR. SHKOLNIK: That's true at that point.

11 THE COURT: You visited the Eighth Circuit once. You  
12 came back, you know.

13 MR. SHKOLNIK: So the Court's well aware of  
14 Judge Perry's history.

15 THE COURT: I'm aware of her case, I have to admit.  
16 I didn't sit down and just look for trouble because I like not  
17 to borrow trouble. So I wasn't really aware of what  
18 Judge Ross had or Judge White has.

19 MR. SHKOLNIK: They're -- They're virtually --  
20 They're the same Complaints as you have here today; just  
21 different plaintiffs. The same next of kin is bringing the  
22 case. Father Chris Collins is bringing it on behalf of those  
23 children as well, and the allegations are all the same. They  
24 mirror the allegations in the case before Judge Perry.

25 One of the main issues that I think was delaying

1 things in Judge Perry's case was the jurisdictional issues.  
2 That's not an issue here. They've conceded personal -- They  
3 conceded jurisdiction in this Court.

4 The claims, the negligence, the underlying events  
5 that occurred down in Peru and as they relate to the corporate  
6 as well as the personal or the actual individuals here in --  
7 in Missouri are all the same whether it's your case, whether  
8 it's Judge Ross' two cases, whether it's Judge White's or  
9 Judge Perry's. They're all the same operative claims.

10 We had made the motion to you, which was denied  
11 because we didn't follow the proper procedure, regarding  
12 consolidation. We have since made a motion before Judge Perry  
13 to consolidate the cases into her lower numbered cases, and  
14 it's now pending. We have not put in our reply papers. I  
15 think they're due this Friday.

16 THE COURT: My recollection, although I didn't look  
17 at it again today, is that the Defendants have opposed  
18 consolidation. Is that correct?

19 MR. DOWD: That's correct, Your Honor.

20 MR. CROWE: That's correct, yes.

21 MR. SHKOLNIK: Yes, Your Honor. It's been opposed.  
22 It was opposed was here. It's now opposed before Judge Perry.  
23 The gist of the argument is those cases were pending for so  
24 long and will somehow disrupt the -- the stream of events  
25 there, though I don't see how that happens, but that's left

1 for Judge Perry to decide. It's not much different than an  
2 MDL where new cases get tagged along for years after the  
3 initial case is brought.

4 THE COURT: I called Judge Herndon about a Pradaxa  
5 case last week, and he said, "Don't send it to me. We're --  
6 We're done." So that happens; just saying.

7 MR. SHKOLNIK: But he closed the -- But he closed the  
8 whole MDL down.

9 THE COURT: That's what he said. "The money's gone;  
10 don't bother me."

11 MR. SHKOLNIK: I happen -- I happen to have been  
12 there the night when we settled that case.

13 THE COURT: All right.

14 MR. SHKOLNIK: I'm very well aware of it.

15 So, Judge, I think the issue here is: If the cases  
16 are staying with you, we would like to adopt similar rulings,  
17 similar CMOs, rather than have this Court embark upon sort of  
18 reinventing wheels.

19 When these clients were signed up, and I -- and I  
20 personally was involved in much of these efforts, we made sure  
21 that discovery -- the discovery devices that were in place  
22 pursuant to Judge Perry's Orders were prepared when the  
23 clients were signed up. One of the big delay factors in the  
24 case before Judge Perry was the fact that the plaintiffs in  
25 that case did not have Plaintiffs' Fact Sheets done, did not

1 have individual discovery done, or -- I shouldn't say -- I'm  
2 not saying it in a negative way. They just -- It took a long  
3 time. They have a thousand plaintiffs. It takes a while to  
4 do that.

5 What we decided to do in this case was get the  
6 plaintiffs' discovery done before we filed our cases. We have  
7 over -- I think it's 1900 or 2000 clients now. We have almost  
8 as many Plaintiff's Fact Sheets already done for these  
9 plaintiffs. We have medical records being collected on almost  
10 all of them already. And before we file, we're collecting the  
11 discovery and -- and embarking on the case that way. We  
12 didn't want to tie up the court system for years waiting for  
13 this -- for PFSs to be -- to be answered.

14 There was a CMO in place. What we're asking here is  
15 that this Court adopt the same Plaintiffs' Fact Sheets, the  
16 same discovery schedules. If the Defendants don't like it, if  
17 they're not happy with sort of the hand that was dealt them by  
18 Judge Perry, that's fine. We could always deal with the  
19 additional items that they think they're entitled to by way of  
20 further application to the Court after they see what we've  
21 done.

22 So, in essence, our -- our submission for the Rule 16  
23 is that the similar discovery orders that are in place before  
24 Judge Perry be mirrored here rather than have you do the same  
25 thing.



1           These 96 -- 92 plaintiffs can have Plaintiffs' Fact  
2       Sheets served within -- within days or a week. We could be  
3       moving into the next phase of this case immediately; not  
4       months, not -- not years.

5           THE COURT: Well, just -- Why don't you articulate.  
6       What -- What do you think the next nine months look like? And  
7       then -- I don't see biting off trial dates today, but how do  
8       you see the next nine months? And then we'll turn to the  
9       Defendants, and we'll talk about ---

10          MR. SHKOLNIK: We propose to serve our Plaintiffs'  
11       Fact Sheets within, I'll say, the next 30 days. We  
12       prepared -- We're prepared to start serving the medical  
13       records simultaneously with a -- on a rolling basis. We're  
14       collecting a lot of them. We're going to be turning them over  
15       as soon as we -- as soon as we can.

16          We would propose the same type of procedure as  
17       Judge Perry; that by the end of the 60th day, we each  
18       designate ten plaintiffs for bellwether pool. They'll have  
19       the Plaintiffs' Fact Sheets. They'll be translated for them  
20       as well.

21          THE COURT: You pick ten; the Defendants pick ten.  
22       We work those 20 cases up.

23          MR. SHKOLNIK: Yes, Your Honor. And we do the  
24       Plaintiffs' Fact Sheets for all of them. They have them for  
25       all -- all the 92 cases. And then we work up those cases over

1 the next six months; five, six months, Your Honor. That's our  
2 -- That's our plan, we hope. I mean it may be ambitious;  
3 maybe seven months.

4 THE COURT: I mean doing 20 plaintiffs in six months,  
5 you'd have to -- you'd have to turn into an amoeba multiplied;  
6 take multiple depositions.

7 MR. SHKOLNIK: We have a few -- We have a few amoeba  
8 back in -- back in the office. But if it takes a little bit  
9 longer, if it takes seven or eight months, we could do it. We  
10 think we can.

11 THE COURT: That's fine. I'm just trying to get a  
12 vision of what your vision is.

13 MR. SHKOLNIK: Yeah. We can -- We can move this  
14 pretty quickly.

15 And then we would like to start the discovery  
16 simultaneously with the Defendants. There are issues  
17 regarding Plaintiffs' Fact Sheets. We would like to propose  
18 those as well; that those be done within 30 to 60 days of the  
19 Plaintiffs' Fact Sheets. It's only reasonable.

20 And then we will be proposing certain documentary  
21 discovery upon the Defendants. But in order to expedite that,  
22 we've seen in motion papers that the Defendants claim that a  
23 voluminous amount of discovery has been done in the other  
24 cases. We would be happy not to propose any further discovery  
25 and just have them produce what was produced in Judge Perry's

1 case so there is no duplication of efforts. We don't want to  
2 increase the burden on the Defendants in these cases  
3 whatsoever. We're willing to take that. If they haven't  
4 produced, then we will propose our discovery in the same  
5 60-day window that I'm -- that I'm suggesting here,  
6 Your Honor. And I think by the end of the year we should have  
7 most of the discovery done where we could then be looking for  
8 a trial sometime in the latter part of '17, into the beginning  
9 of '18.

10 THE COURT: What's the status of the Ross cases and  
11 the White cases?

12 MR. SHKOLNIK: We haven't had our first conference  
13 yet.

14 THE COURT: Okay. All right.

15 MR. SHKOLNIK: Thank you, Your Honor.

16 MR. CROWE: Good afternoon, Your Honor. Jim Crowe  
17 again for the record.

18 I think I'll -- with the Court's indulgence, I'll  
19 start with one of Mr. Shkolnik's later comments and work  
20 backwards through how that would impact the plan as the  
21 Defendants see it.

22 And by that, I'm referring to the assumption that the  
23 extent of the discovery of the Plaintiffs would largely be  
24 comprised by the Plaintiff Fact Sheets as they're referring to  
25 them. And I'd note at the outset that we didn't have input

1 into whatever Fact Sheet it is that they are completing with  
2 their clients. And while we did have some input into the Fact  
3 Sheet, that they said they've modeled it after the one that  
4 Judge Perry endorsed in her cases, there were items that we  
5 had sought to see included in that sheet that were declined by  
6 the Court and we would want to revisit again. And so  
7 regardless of what is in them now, I can tell the Court that  
8 there will be other items we'd like to see completed by the  
9 Plaintiffs.

10 And what we found from those Plaintiff Fact Sheets is  
11 that they are helpful to a point, and they are what makes this  
12 case different from the type of MDL that Mr. Shkolnik is  
13 referring to which is they cannot serve as the sole basis for  
14 discovery in the claims of these Plaintiffs. They are  
15 inadequate for that. What they are useful to do is to  
16 identify basic bio data, family relationship and perhaps the  
17 providers, educational and medical from whom discovery needs  
18 to be obtained. And it's -- it's significant in our  
19 experience, and I think the plaintiffs in the cases before  
20 Judge Perry's experience, more difficult to obtain those  
21 records in Peru than it is here, and it's not as  
22 straightforward as simply serving releases and the records are  
23 forthcoming for all the parties, nor would that be the limit  
24 of the discovery we're seeking. We -- We need to discover on  
25 matters that relate to issues of liability, legal framework of

1 the case to include the law of Peru that would remain  
2 steadfast as the applicable law in these cases, and we'll  
3 visit with the Court on that at the appropriate time in this  
4 and any other case.

5 But also, likewise, what is it that the Plaintiffs  
6 have to support their claims? Each of these claims is an  
7 individual one. These -- This cannot be treated in MDL  
8 fashion because while the exposure that they claim and the  
9 allegations as they've related to us, ---

10 THE COURT: Well, in fact, it's more like an MDL  
11 because MDLs are a substitute for -- You can't have a class  
12 action because the causation is unique to each plaintiff which  
13 is what you're arguing.

14 MR. CROWE: It is similar in that vein.

15 THE COURT: That's -- That's how the MDL world came  
16 to exist because -- I just finished the 2500 cases in  
17 *NuvaRing* --

18 MR. CROWE: Sure.

19 THE COURT: -- which Mr. Shkolnik started out with.  
20 Every woman had a different causation issue with the product.  
21 So it's not a class, but you can do -- In an MDL you can do  
22 the general liability issues before you get to the individual  
23 causation liability issues, and that's kind of where we are  
24 here, I gather.

25 MR. CROWE: Fair enough. And it's -- it is distinct

1 from the pharmaceutical MDLs in that we don't have a known  
2 common exposure for each client or similar exposure, no doubt.

3 THE COURT: Right. I mean, first, you're going to  
4 have -- they're going to have to go over the initial threshold  
5 of: Does the, you know, the product even cause what they say  
6 it causes before we get to whether it caused it in this  
7 individual person.

8 MR. CROWE: Correct.

9 THE COURT: It's a two -- Like anything, it's going  
10 to be two levels of expert discovery here. Overarching expert  
11 discovery could start tomorrow. The individual expert  
12 discovery has to wait until whatever this dispute about what  
13 Plaintiffs' information is complete before we go down that  
14 road. So I still see it like an MDL. There's two tracks  
15 going on.

16 MR. CROWE: Agreed. And there are certain things  
17 that, as Your Honor suggests, can be addressed at a higher  
18 level and perhaps in tandem with some of the work being done  
19 on the individualized discovery, but that's where the  
20 Plaintiff Profile Sheets prove inadequate. And what we have  
21 found is that there has been a need, as we portrayed from the  
22 outset, and I think those cases have borne out, despite a lot  
23 of effort on the Plaintiff Profile Sheets, that they've borne  
24 out the fact that written discovery is needed. It's  
25 incontrovertible that deposition discovery would be needed.

1 And as a practical note on that point, I'll submit to the  
2 Court that even if we were to proceed only with Plaintiff Fact  
3 Sheets, which we would object to, getting the Plaintiffs here  
4 for deposition and completing even 20 Plaintiff -- Peruvian  
5 Plaintiffs' depositions inside of six or nine months I think  
6 will be a steep hill to climb.

7 THE COURT: But that's why we're here. We're going  
8 to figure this out.

9 MR. CROWE: Sure.

10 THE COURT: I mean so how do you see the next nine  
11 months?

12 I mean part of -- When listening to you, and without  
13 getting -- going back and forth, they say they've got  
14 Plaintiffs' Fact Sheets ready for you. You can see them  
15 within a month. It seems, from this side of the room, you get  
16 them. And then if -- Rather than borrow trouble, then you  
17 file motions telling me what it is you think is missing or  
18 what else would be necessary, you know. Let's not assume it's  
19 too little, but I'm sure -- I have no doubt you'll come back  
20 and tell me it's too little, but let's define it rather than  
21 talk about it in generalities.

22 MR. DOWD: I think we could -- I think Jim could  
23 probably define it right now for you, Judge, some of the  
24 things we know we're going to need.

25 THE COURT: Okay. But I don't have a motion in front

1 of me, you know, --

2 MR. DOWD: Yes.

3 THE COURT: -- for me to give a definitive ruling,  
4 but they, obviously, know the troubles or lack thereof that  
5 you've experienced with Judge Perry.

6 MR. DOWD: Yes.

7 THE COURT: Hopefully they've accommodated some of  
8 that in anticipation of not repeating some of the trauma.

9 MR. DOWD: Exactly. I think Jim could give you some  
10 examples of what we need from them.

11 MR. CROWE: And Mr. Shkolnik will ---

12 THE COURT: I mean the sooner we all figure out how  
13 to satisfy that, the better off we all are.

14 MR. DOWD: Exactly.

15 MR. CROWE: Mr. Shkolnik also alluded that they're  
16 gathering the medical records. And depending upon what they  
17 look like, what we use the Plaintiff Profile Sheet for is to  
18 compare and say: Who are the providers identified? And do we  
19 have records from those providers?

20 So certainly we agree, Your Honor, it's a starting  
21 point. We simply, and with the Court's leave, we want to be  
22 able to come back and visit about what else is needed  
23 because ---

24 THE COURT: That's my greatest weakness. You will  
25 come back over and over and over again.



1 MR. CROWE: Well, ---

2 THE COURT: So there will be no lack of opportunity  
3 to discuss these issues in the future.

4 MR. CROWE: Sure. Well -- I mean in the ordinary  
5 course, we would have just served the discovery or agreed on  
6 the Plaintiff Fact Sheets. So the fact that we're coming back  
7 in response to a sheet we haven't seen can be surprising.

8 THE COURT: But today we're managing expectations.

9 MR. CROWE: Fair enough.

10 THE COURT: So you tell me what your expectations  
11 are, and let's see where we go.

12 MR. HICKEY: Right. And, Your Honor, Michael Hickey.

13 Just to add on to that, in the cases before  
14 Judge Perry, we started with the paradigm of the Fact Sheets,  
15 and what ultimately was adopted was that we then did more  
16 fulsome written discovery of -- of plaintiffs. And we -- So  
17 we have sets of interrogatories and document requests that --  
18 that really get -- get behind what are the bio data in those  
19 Fact Sheets. So we'll be ready to go with those whenever you  
20 want.

21 THE COURT: So you don't have to pay some poor, young  
22 first-year associate to sit in a room all by himself for the  
23 next month drafting document requests, interrogatories.  
24 They're ready to go.

25 MR. HICKEY: Not this time around.

1 MR. CROWE: And we've learned from those, too, much  
2 like we have the Plaintiff Profile Sheets, and we would modify  
3 those based on the types of response we're seeing --

4 THE COURT: Sure.

5 MR. CROWE: -- and try and get to meaningful  
6 information.

7 THE COURT: That is a question I didn't ask. Since  
8 you all have had some experience with this, let's take  
9 *NuvaRing* as a hypothetical. There were three common types of  
10 injury. There was a DVT, a stroke and a heart attack. Do --  
11 Do these kinds of cases have categories of injury or is it --  
12 is there a commonality generally?

13 I understand you're not going to concede any injury.  
14 I'm not asking you to -- to give it up at the first hearing,  
15 but -- but when you look at the Plaintiffs' claims, are  
16 they -- do they break down by category or is there just one  
17 overarching type of claim?

18 MR. SHKOLNIK: There's one injury: Lead poisoning.  
19 And that's ---

20 THE COURT: Does it manifest itself in different  
21 ways?

22 MR. SHKOLNIK: I would suggest not as to the claims  
23 in these children. I think there's a common constellation of  
24 symptoms in lead-poisoned children that we're going to be  
25 presenting, Your Honor.

1 THE COURT: This is just to educate me a little bit  
2 so when we get to: You pick ten plaintiffs and you pick ten  
3 plaintiffs, I don't need the worst and the best. I need a  
4 better sample to inform us as to how to proceed.

5 MR. SHKOLNIK: And, Your Honor, I would also suggest  
6 that we could, like we did in *NuvaRing*, have a science day of  
7 some type or science presentation be down the road.

8 THE COURT: You know, I can't make anybody do a  
9 science day, but they help, I mean, you know, so.

10 MR. ROTHSCCHILD: Judge, --

11 THE COURT: Yes.

12 MR. ROTHSCCHILD: -- Andy Rothschild as part of the  
13 tag team.

14 THE COURT: I don't -- I don't mean to wander as far  
15 off the reservation as I did.

16 MR. ROTHSCCHILD: Well, and I -- Because I've been  
17 involved personally probably the longest, representing --  
18 There's been domestic cases here from Herculaneum and  
19 St. Francois County on the various types of claims.

20 So to answer your question, the term "lead poisoning"  
21 that counsel just used has a -- is a term with little meaning.  
22 The types of injuries fall within a general category from  
23 light exposure, particularly to children, that we think of as  
24 neurocognitive, and that's a very subjective type of injury.  
25 It can be measured perhaps by some IQ deficits, some

1 manifestation of ADHD, things like that. And so it's a very  
2 difficult thing. And with it, from our experience of the many  
3 domestic cases we've had here for the same client, the same  
4 type of exposure to someone of a similar age and the like can  
5 manifest itself very differently in the individual.

6 And I know this is not the answer the Court may want  
7 to hear, but it is, in fact, the truth. So that it does get,  
8 as the Court was indicating earlier, very fact specific to  
9 each individual plaintiff as to (1) whether there truly is a  
10 manifestation of injury, and (2) of what type and to what  
11 extent. So that's -- I wanted the Court to know that.

12 THE COURT: Okay. But there are no -- there are no  
13 easy categories to place it in.

14 MR. ROTHSCHILD: That is correct.

15 MR. CROWE: And that's perhaps, Your Honor, what I  
16 was inartfully trying to tell the Court; that although you  
17 might be able to employ an MDL style of managing the case,  
18 you're not going to find those silos of plaintiffs with sort  
19 of if they're in this certain age category, the known effects  
20 of the product or the pharmaceutical product are "Y." You're  
21 not going to have those nice neat bundles of cases, certainly  
22 not -- without knowing from a bellwether standpoint, which we  
23 think is a term which doesn't really have application here,  
24 what all of these plaintiffs look like. So to say one  
25 plaintiff or another is representative of the balance is

1 impossible until you have discovered each of those plaintiffs'  
2 claims within the group.

3 THE COURT: Yeah. And I'll give you my learned bias.  
4 This is a -- "Learned" is too strong a word. My historical  
5 bias. Bellwethers don't do us a lot of good. If they pick  
6 their best case, you'll say, "See, that was their best case."  
7 You pick your best case and you win, and they'll go, "See,  
8 they picked their best case." Every case is going to stand  
9 and fall on its own. We just have to inform ourselves over  
10 time because if we just try the extremes, we don't learn  
11 anything is my point. We really don't, so.

12 MR. DOWD: Right.

13 MR. HICKEY: And -- And to that end, I think the  
14 issue that -- in terms of the way that Plaintiffs have  
15 presented here of kind of the ten and ten, ---

16 THE COURT: I'm almost better off picking ten at  
17 random than I am letting you all each pick ten, you know, --

18 MR. HICKEY: Well, ---

19 THE COURT: -- to inform us as to what happens. I  
20 don't have an opinion yet. I'm learning, so.

21 MR. HICKEY: Right. Because I think the issue that  
22 we found when we were in the cases before Judge Perry with  
23 respect to selection of Plaintiffs based solely on Plaintiff  
24 Profile Sheets, it was -- it was a shot in the dark. The  
25 Plaintiffs in the cases before Judge Perry had information

1 beyond what the Defendants had and were able to make their  
2 selections on their cases, whereas we simply had the Fact  
3 Sheets and that's all we could judge from.

4 THE COURT: Have you even gotten to the *Daubert* level  
5 debate in the Judge Perry cases?

6 MR. HICKEY: No.

7 MR. CROWE: We've not.

8 THE COURT: I mean that's where the -- that's where  
9 the case really comes into focus.

10 MR. CROWE: No question, Judge. And a lot is riding  
11 on the expert discovery. They're -- At least it's been  
12 suggested that they're going to rely on experts to -- to  
13 supplant or suffice for Rule 26 disclosures even on the  
14 category and computation of damages, method of damages and  
15 what not, so.

16 THE COURT: So let's -- let's -- let's take  
17 Mr. Shkolnik at his suggestion that they produce their  
18 Plaintiff Fact Sheets in 30 days. Why don't we do that?

19 MR. CROWE: Why not, Judge? We agree.

20 THE COURT: You know. And then if you -- You have an  
21 opportunity then to come back and say -- I mean maybe you all  
22 should meet and confer as you leave today. I mean if -- if --  
23 Mr. Shkolnik, why don't you approach.

24 MR. SHKOLNIK: Thank you.

25 THE COURT: The Fact Sheets you've used, are they the

1 ones -- do they mirror the ones from the Judge Perry case?

2 MR. SHKOLNIK: Your Honor, just ---

3 THE COURT: Or did you add anything after having gone  
4 through ---

5 MR. SHKOLNIK: Docket No. 109 from Judge Perry, dated  
6 April 25, references the Plaintiffs' Fact Sheets.

7 THE COURT: April 25 of?

8 MR. SHKOLNIK: I'm sorry. I'm sorry. 2013. I  
9 apologize.

10 THE COURT: All right.

11 MR. SHKOLNIK: And it is an Order that enters a  
12 format; medical, educational authorization form, and a format  
13 of Plaintiff Profile Fact Sheet form. We used those forms.

14 THE COURT: So you're -- The Fact Sheets you're going  
15 to produce here mirror the ones from there.

16 MR. SHKOLNIK: Yes, Your Honor.

17 THE COURT: All right.

18 MR. SHKOLNIK: And, Your Honor, just -- if I could  
19 just add to that.

20 THE COURT: Yeah.

21 MR. SHKOLNIK: We were never suggesting that  
22 additional discovery wasn't necessary on trial -- depositions  
23 and ---

24 THE COURT: Because, you know, you wouldn't get any  
25 far -- very far with that, so that's okay.

1 MR. SHKOLNIK: Yeah. We weren't suggesting that. I  
2 just want to make sure that was clear.

3 THE COURT: All right.

4 MR. CROWE: So I just want to do a couple of other of  
5 Mr. Shkolnik's suggestions, Your Honor.

6 They -- There was a suggestion that there be a  
7 Defendant Completed Profile Sheet for each Plaintiff about  
8 whom we have information, and that is not an approach we think  
9 makes sense. Certainly, if there is blood lead data -- There  
10 were studies conducted at various points in time in this area  
11 both by Public Health Ministry in Peru and some in  
12 collaboration with the Peruvian company, Doe Run Peru, and so  
13 there is -- that data is available, and we have produced it as  
14 to the Plaintiffs who are represented by counsel in the  
15 Judge Perry case as to those Plaintiffs' lawyers. What we  
16 would submit, because we're treating it as effectively  
17 HIPAA-protected information, based on the way the data is  
18 presented, it has their name and their individual results  
19 where that is presented in some of the studies. We would need  
20 to know, to make this exercise efficient and to not have to  
21 repeat it, the identities of all the Plaintiffs that these  
22 gentlemen represent so that when we're redacting Plaintiff  
23 information out, we're only redacting clients -- information  
24 of clients they don't represent, whether or not they filed or  
25 not, because it's a tedious process. Some of the records are



1 handwritten in Spanish. We don't want to have to repeat it  
2 multiple times, and that's something I suggest we meet and  
3 confer on a -- on a protocol about.

4 MR. SHKOLNIK: Your Honor, we'll stipulate and we'll  
5 work it out. We'll even give them the list of all of our 1900  
6 plus clients so they can do it once and never repeat it for  
7 those clients.

8 MR. CROWE: That's -- That's the goal, Your Honor, is  
9 all. I mean we're not ---

10 THE COURT: It's good to talk.

11 MR. CROWE: Right. Well, it's good. There have been  
12 some changes today. It's all -- all productive.

13 I think there was one other item that he mentioned.  
14 Oh, the -- Importantly, the discovery of the Defendants. I  
15 think, certainly, we're amenable to not repeating what has  
16 been, I'd say, a long and hard-fought negotiated discovery by  
17 the plaintiffs' lawyers in the *Reid* case. It is a substantial  
18 corpus of information, both hard copy and ESI, and that is a  
19 process that is concluding shortly, we hope. And so that --  
20 If and once that's ready and subject to, you know, a schedule,  
21 we can provide that to the Plaintiffs. We'll want to -- And  
22 we can confer with counsel. As we intimated in the Scheduling  
23 Order, we would offer a 502(d) order, a protective order, for  
24 the information itself and any other protocol of production.

25 THE COURT: I was going to ask. So you need to work

1 out a protective order.

2 MR. CROWE: No question. And -- And all that's been  
3 done subject to a clawback order in Judge Perry's case because  
4 there's been very limited review made of that information due  
5 to its sheer volume. There was very limited privilege review  
6 done.

7 MR. SHKOLNIK: We will most likely adopt what has  
8 already been entered and just discuss it the way counsel has  
9 with the PFS, Your Honor.

10 THE COURT: How's your document depository being  
11 maintained in the Perry case?

12 MR. CROWE: So we have -- It's all being maintained  
13 in a relativity environment at this point, the produced data.  
14 And so that's -- We're able to produce it to them in most  
15 formats that they might need it in, depending upon what their  
16 database is. So they can export it in different formats.

17 THE COURT: Which -- Do you have a cost-sharing  
18 agreement in the case?

19 MR. CROWE: No. There was limited cost-sharing  
20 entered. It's not a shared environment. So the Plaintiffs  
21 are hosting it on their own, and the Defendants are hosting it  
22 on -- on their own. So if that's something that -- they want  
23 to entertain a shared-hosting environment, that's certainly  
24 something we're happy to discuss. As to ---

25 THE COURT: I'm just asking. I'm not telling you at

1 this point.

2 MR. CROWE: No, it didn't come about in a shared  
3 environment. The Plaintiffs are going to host the data or are  
4 hosting the data on their own as they receive it.

5 MR. SHKOLNIK: We could do the same thing. We have  
6 the capability.

7 THE COURT: All right.

8 MR. SHKOLNIK: We'll work something out.

9 MR. CROWE: So we'll just work on the protocol and  
10 the format of what they need.

11 THE COURT: All right. What else do you see  
12 happening in the next six to nine months?

13 MR. CROWE: So after receiving the Plaintiff Profile  
14 Sheets for all the Defendants on file, we would then identify  
15 the additional likely written discovery responses we'd like to  
16 see that would address both any outstanding medical or  
17 educational records. Other questions of -- that relate to  
18 facts that we think could relate to the legal issues we'll  
19 present to the Court; capacity to sue, the adequacy of the  
20 next friend, who the legal guardians are of these people in  
21 Peru and any related evidence; any diagnoses they have about  
22 whether or not symptoms they complain of are related to  
23 exposure to substances emitted by the complex or if they've  
24 been ruled out to the contrary as not resulting from such  
25 exposure scenarios. We'll want to know that, but there are

1 liability issues that we want to vet through that discovery  
2 process. We'd present that.

3           Depending upon how long it takes for Plaintiffs'  
4 counsel to be able to secure responses from the 92 Plaintiffs,  
5 we'd then move forward from there to depositions thereafter,  
6 understanding that by that point, Your Honor, I think the  
7 parties might be in a position to at least, based on the  
8 Plaintiffs' position, come up with what expert discovery could  
9 commence upon their receipt and analysis of the information  
10 the Defendants will discover to them by our productions of ESI  
11 and hard-copy information because knowing those expert  
12 opinions before we discover the Plaintiffs through deposition  
13 will be important. That will also allow the Plaintiffs  
14 adequate time to secure the requisite national identity  
15 documents for them to apply for a passport for them to secure  
16 a Visa to travel to the United States for deposition which is  
17 a process in and of itself.

18           THE COURT: All right. Anything further from the  
19 Defendants?

20           MR. HICKEY: I was just going to throw in two points,  
21 Your Honor, to the extent relevant which is: (1) In the cases  
22 before Judge Perry, I would note that it wasn't a ten and ten.  
23 It ultimately was 18 Plaintiffs selected by Plaintiffs'  
24 counsel and 16 by Defendants' counsel out of a pool of 120.

25           THE COURT: You had north of 200 Plaintiffs there.

1 MR. HICKEY: Out of -- Out of -- Actually out of a  
2 pool of 120 initially.

3 THE COURT: Okay.

4 MR. HICKEY: Then there was -- Some of those  
5 selections ended up being outside the trial pool because,  
6 again, the efficiency of the Fact Sheets ended up kind of  
7 falling below that.

8 I'd also note on the consolidation motion that's  
9 before Judge Perry that that is a motion that's also been  
10 opposed by Plaintiffs' counsel in that case as well, so.

11 THE COURT: So it's 2 to 1. It's 2 to 1,  
12 Plaintiffs/Defendants against new Plaintiffs.

13 MR. HICKEY: 2 to 1.

14 MR. SHKOLNIK: And we were former co-lead counsel,  
15 Your Honor.

16 THE COURT: Well, but we've been down that road with  
17 you in *NuvaRing* before, too. You got along with all of  
18 Plaintiffs' counsel in that case so well.

19 MR. ROTHSCILD: Judge, Andy Rothschild again.

20 If I may, this is a -- perhaps the major concern from  
21 our experience so far with the Judge Perry cases. It is just  
22 starting to become a little clearer, and it's this. The  
23 concern is: There are 1100 plus plaintiffs before  
24 Judge Perry. Mr. Shkolnik has said 1900. Of course, we're  
25 only here on one case right now.

1 THE COURT: Right. That's all we've got.

2 MR. ROTHSCCHILD: And we don't know what goes on with  
3 the other cases pending in the court already or to be filed,  
4 but the concern is how many of those many, many plaintiffs  
5 truly are committed to this litigation or whatever case they  
6 may be named in. And I have to tell the Court as background:  
7 Judge Perry would not permit the Defendants, us, to do written  
8 discovery until very recently and only in a very small number  
9 of Plaintiffs; the 18 that the Plaintiffs selected and then  
10 the 14 or 16 that we were able to select. All of them had  
11 provided Plaintiff Profile Sheets. However, we're, as we  
12 speak, wrestling with the fact that six selected by the  
13 Defendants of the 16 selected by the Defendants have failed or  
14 refused to participate. That's a large number in our mind if  
15 we extrapolate that. And the concern, as the Court, I think,  
16 can see, is: How many of these many plaintiffs are truly  
17 committed to this litigation? And that's something that we,  
18 on behalf of our clients, want to make sure we get an answer  
19 to relatively early.

20 THE COURT: Well, I don't know where we're going  
21 here. I understand what you're saying. Usually it makes  
22 sense to maybe start doing them in batches, you know, months,  
23 you know, like -- It happens in any case. You have this first  
24 group, but they don't all stay intact for a number of reasons,  
25 but if we've got to keep people coming in -- and I'm not sure

1 we do them all at once, but we do them all in pretty short  
2 order.

3 MR. ROTHSCCHILD: Yes, Your Honor.

4 THE COURT: Just sequence it in batches.

5 MR. ROTHSCCHILD: And I may have made this clear, but  
6 the point I wanted to make clear is: With this very small  
7 sample so far, where the individuals did provide a Profile  
8 Sheet, a Plaintiff Profile Sheet, when it got to the point of  
9 answering interrogatories or providing documents was  
10 apparently where they were unable or unwilling to go to that  
11 next step.

12 MR. CROWE: Judge, I'd add only that -- the request  
13 then that if we're going to proceed in batches, just so that  
14 it's manageable, ---

15 THE COURT: I don't know. I'm just suggesting. I  
16 mean I don't see -- If we do them all at one, that's a little  
17 daunting, but we can do these in phases.

18 MR. CROWE: I agree that if we're to try and take all  
19 those depositions at once, but what I -- what I was going to  
20 suggest to Your Honor is that we consider completing the Fact  
21 Sheet and any additional written discovery of those  
22 Plaintiffs, and including production of records, before we  
23 undertake to limit to a smaller group, if that's what the  
24 Court is inclined to do, the group to be selected for  
25 deposition because, otherwise, as Mr. Hickey intimated, you're

1 shooting in the dark. You have no idea.

2 THE COURT: We're borrowing trouble right now. I'm  
3 just trying to get to the fair 60/90 days. Okay?

4 MR. CROWE: Fair enough.

5 THE COURT: And so why don't you stay up there.  
6 We'll talk to Mr. Shkolnik.

7 We're going to get back together again in 60 days.  
8 So that's the only way to get this case off the ground in some  
9 focus. Judge Perry may take it away from me, which is fine,  
10 but I'm going to act and assume that this is my case to  
11 manage --

12 MR. CROWE: We can get a lot done in 60 days.

13 THE COURT: -- unless and until. So you're going to  
14 produce your Plaintiff Fact Sheets in 30 days.

15 MR. SHKOLNIK: Yes, Your Honor.

16 THE COURT: And what are you -- What does that then  
17 trigger?

18 After they produce their Plaintiff Fact Sheets, that  
19 will give you a chance to look at them, and let us know what  
20 other additional information you think you need to evaluate  
21 these Plaintiffs; right?

22 MR. CROWE: Correct, Your Honor.

23 THE COURT: What do you want from them, say, before  
24 we get back together again in 60 days?

25 MR. SHKOLNIK: Well, Your Honor, two things. Number



1 one, whatever's been produced ---

2 THE COURT: In the meantime you're going to work out  
3 the document production issues.

4 MR. SHKOLNIK: Yes.

5 MR. CROWE: Yes.

6 THE COURT: You're going to work out protective order  
7 issues.

8 MR. SHKOLNIK: Yes.

9 MR. CROWE: Production of the blood lead studies or  
10 blood lead data on their individual Plaintiffs, --

11 THE COURT: Right.

12 MR. CROWE: -- if that's in a discrete environment.

13 THE COURT: So there's the three things we'll get  
14 from them.

15 MR. SHKOLNIK: And I think that's -- I think we're  
16 going to be biting off ---

17 THE COURT: That's enough.

18 MR. SHKOLNIK: That's a lot within 60 days.

19 THE COURT: In 60 days we'll get back together.  
20 We'll see what we -- what we have and then chart the next  
21 three to four months after that. I think that's the only way  
22 to do this for now until we get a better sense of what we're  
23 -- where we're going. And then we'll worry about narrowing it  
24 down for trial purposes sometime later this year.

25 MR. CROWE: I -- I think that works well, Your Honor.

1 I submitted the 30-day mark. If we could also target  
2 submission of a joint proposed order or competing orders if we  
3 -- if it comes to that on these issues that we just related,  
4 document-related issues, and then, likewise, our Rule 26  
5 disclosures of the Defendants, and that will beat the Profile  
6 Sheets for now.

7 THE COURT: Okay. So we'll get back together again.  
8 How does April the 27th look for everybody?

9 MR. SHKOLNIK: Your Honor, that would be -- that's a  
10 really bad one. I have two days of -- of inspecting an  
11 airplane crash wreck in Pensacola.

12 THE COURT: What -- What good would it do for you to  
13 go see an airplane crash?

14 MR. SHKOLNIK: They actually teach us how to -- they  
15 teach us how -- what the defect is. We always do them.

16 THE COURT: Look, it's broken.

17 MR. SHKOLNIK: It's really just a ---

18 THE COURT: Okay. Are there any days that week when  
19 you're available?

20 MR. SHKOLNIK: Monday would be fine.

21 THE COURT: Which I try to avoid but you're the guy  
22 who's traveling on this side of the room. I mean I try to  
23 avoid Mondays for out-of-town counsel.

24 MR. SHKOLNIK: 28th would be great or the 29th.

25 THE COURT: What do I hear from the Defendants?

1 What -- What say you?

2 MR. DOWD: It's fine with me, Your Honor.

3 MR. CROWE: It works for us, Your Honor, subject to  
4 Mr. Hickey and Mr. Rothschild.

5 MR. ROTHSCILD: That works for us.

6 MR. CROWE: Okay, great.

7 THE COURT: What day does?

8 MR. CROWE: The 28th.

9 THE COURT: The 28th at 10:00.

10 MR. SHKOLNIK: That's great. Thank you, Your Honor.

11 MR. CROWE: Very good. Thank you. I appreciate  
12 that.

13 THE COURT: And can you all -- Well, what we just --  
14 The Plaintiffs' Fact Sheets in 30 days.

15 MR. SHKOLNIK: Yes.

16 THE COURT: Before we get back together again, you're  
17 going to work out the document production issues, protective  
18 order issues, and the blood ---

19 MR. CROWE: We'll agree on the protocol. It's going  
20 to take some time to redact, but we'll ---

21 THE COURT: You'll agree on the protocol for going  
22 through the data that you apparently have from the testing on  
23 the ground in Peru. Is that correct?

24 MR. CROWE: Right.

25 THE COURT: Are there any other categories of things

1 that ---

2 MR. SHKOLNIK: No. I think that would do it.

3 THE COURT: What do you call -- What's the term of  
4 art for the Peru blood ---

5 MR. CROWE: "Blood lead studies" are what they're  
6 commonly referred to.

7 MR. SHKOLNIK: I think that covers the solid 60 days  
8 of work.

9 THE COURT: Are there any -- Has Judge White or  
10 Judge Ross set anything in those other cases?

11 MR. SHKOLNIK: No.

12 MR. DOWD: No, Your Honor.

13 MR. CROWE: No, Your Honor. They were later filed,  
14 and so the Answers have only ---

15 THE COURT: I'm not suggesting that they're not doing  
16 their job.

17 MR. CROWE: Right. No, but it's -- they're --  
18 they're trailing Your Honor's case.

19 THE COURT: I'm just -- I'm just trying to inform  
20 myself, you know.

21 MR. CROWE: I think it's fair to say they're trailing  
22 this case in time.

23 THE COURT: And just as a matter of caution, I won't  
24 entertain adding more plaintiffs into this case. I just --  
25 You know, we're not going to have a vehicle where we just

1 keep -- I mean they're individualized cases in the first  
2 instance.

3 MR. SHKOLNIK: We understand.

4 THE COURT: There are challenges to break them out,  
5 not add them in, so.

6 MR. SHKOLNIK: We're not going to make the motion to,  
7 in light of the pending motion with Judge Perry.

8 THE COURT: Managing expectations; all right? That's  
9 all. "Why didn't he do that?" I mean you know what I mean?  
10 The real challenge is why not break these into 94 cases and  
11 just consolidate them for discovery purposes, but I haven't  
12 formed an opinion on that.

13 MR. CROWE: That's what we view them to be,  
14 Your Honor, so.

15 THE COURT: I haven't formed an opinion on that yet.  
16 We get to the same place.

17 MR. SHKOLNIK: Yes, Your Honor.

18 THE COURT: Don't panic. You had that look like,  
19 "Oh, my gosh!"

20 MR. SHKOLNIK: No, no. I think we -- I think that  
21 may have happened in -- in the past. In *NuvaRing* I think  
22 there was a couple of bundled Complaints that got transferred,  
23 and that issue was considered. I don't remember how it was  
24 handled in that case, but I -- I think that was an issue.

25 THE COURT: Well, on MDL it's more important because

1 you got to know where to send them home to if they don't  
2 settle.

3 MR. SHKOLNIK: True, Your Honor.

4 THE COURT: You know, you can't send a bundle when  
5 half of them are in Northern Florida and half are Northern  
6 North Carolina, you know. So they almost have to originate  
7 properly as an individual case so if the -- if there's not a  
8 global settlement, they have a home to go to when you're done.

9 MR. SHKOLNIK: I understand.

10 THE COURT: So all right. Thank you all very much.

11 MR. CROWE: Thank you, Your Honor.

12 MR. DOWD: Okay. Thank you, Judge.

13 MR. CROWE: I appreciate it.

14 MR. ROTHSCHILD: Thank you, Your Honor.

15 (Hearing concluded at 3:00 PM.)  
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CERTIFICATE OF OFFICIAL REPORTER

I, Deborah A. Kriegshauser, Federal Official Realtime Court Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 31st day of March, 2016.

/s/ Deborah A. Kriegshauser

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